

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
LEYSON M. VARGAS,

Plaintiff,

VERIFIED
COMPLAINT

- against -

THE CITY OF NEW YORK, JAY RICHIEZ,
MARTIN CUNNINGHAM and "JOHN" RICHARDS,

Defendants.
-----X

Plaintiff, by KAFKO SCHNITZER, LLP, his attorneys, for his complaint herein,
respectfully alleges:

AS FOR THE FIRST CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

1. That plaintiff has complied with all of the conditions precedent to the bringing of this action and more particularly on or about December 23, 2014 and within 90 days after the date of the occurrence hereinafter set forth, plaintiff duly served a written notice of claim upon the City of New York, pursuant to law, said notice being
3 verified by oath of plaintiff; that this action is brought within one year and ninety days after said occurrence; that more than 30 days have elapsed since service of said notice and said claim remains unadjusted.

K 2. That on September 25, 2014 plaintiff was properly and legally at or about 220 East 18th Street, Brooklyn, NY.

3. That on said date, defendants employed certain police officers at the 70th police precinct including but not limited to defendants JAY RICHIEZ, MARTIN CUNNINGHAM and "JOHN" RICHARDS.

4. At said time and place, plaintiff was properly conducting himself thereat.

5. As said time and place plaintiff was arrested and detained by certain New York City Police Officers including defendants JAY RICHIEZ, MARTIN CUNNINGHAM and "JOHN" RICHARDS, without provocation, probable cause and without plaintiff's consent.

6. That said officers entered into plaintiff's residence without a warrant or probable cause.

7. At said time and place, plaintiff was handcuffed and taken to the 70th precinct without his consent where he was detained, searched, arrested and issued summonses for possession of marijuana and a "round of bullets".

8. At said time and place, defendant THE CITY OF NEW YORK's police officers, including the aforesaid defendant officers, detained and arrested plaintiff during the scope and in the course of their employment for defendant.

9. That on numerous occasions, plaintiff was caused to and did appear at Criminal Court, Kings County and at the Criminal Court at 346 Broadway, New York, NY on charges of which he was wholly innocent.

10. That defendants, through their agents and /or employees, knew or should have known that the charges against plaintiff were false.

11. That on May 7, 2015, before Hon. J. Gerstein, the aforesaid charge regarding marijuana possession was dismissed.

K 12. That on April 13, 2015, plaintiff accepted an ACD regarding possession of a single bullet kept as a memento for a deceased veteran friend.

D 13. That the aforesaid detention, arrest, charges, imprisonment and prosecution were unreasonable and without cause or probable cause.

D 14. That as a result of the foregoing false imprisonment and false arrest of this plaintiff, he sustained mental distress, anguish, humiliation and embarrassment, deprivation of liberty, and was unable to attend to his usual customary duties and activities, and lost earnings.

AS FOR THE SECOND CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

P 15. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 14 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

X10 16. That defendant THE CITY OF NEW YORK, respectively, had a legal and/or lawful duty to properly train and supervise its employees, agents and/or servants employed as police officers, in the proper techniques and protocol in engaging in all activities and circumstances related to and associated with their respective scope and duties as police officers in the City of New York.

D 17. That the aforesaid unlawful, illegal and improper acts of the abovementioned police officers, particularly that of the defendants JAY RICHIEZ, MARTIN CUNNINGHAM and "JOHN" RICHARDS were caused solely by reason of the negligence and carelessness of respective defendant THE CITY OF NEW YORK in employing and retaining in its employ, dangerous, troublesome, incompetent,

untrustworthy and rogue persons, including the defendants JAY RICHIEZ, MARTIN CUNNINGHAM and "JOHN" RICHARDS, who they knew, or should have known was a source of danger or menace to the lives, liberty and freedom of those persons lawfully present in the County of Kings, City and State of New York.

18. That defendant THE CITY OF NEW YORK, respectively, their agents, servants and/or employees failed to exercise reasonable care in the hiring, retention, training, disciplining and supervising of the aforesaid individual police officers herein mentioned.

19. That by reason of the foregoing, plaintiff has suffered injuries and damages as aforesaid and defendant, THE CITY OF NEW YORK, respectively, is liable for such injuries and damages.

20. That by reason of the foregoing, plaintiff has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, said amount to be determined upon the trial of this action.

AS FOR THE THIRD CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

21. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 20 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

22. Upon information or belief, on or about September 25, 2014 and from that time until the dismissal of charges on or about August 13, 2015, Defendants, their agents and/or employees, deliberately and maliciously prosecuted plaintiff an innocent man

without probable cause, by filing or causing a complaint to be filed in Criminal Court of the City of New York, Kings County, for the purpose of falsely accusing Plaintiff of violation of the criminal laws of the State of New York.

23. The defendants, their agents and/or employees failed to take reasonable steps to stop the prosecution of plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to include the prosecution of Plaintiff.

24. That the commencement of these criminal proceedings was malicious and began in malice and without probable cause, so that the proceeding could succeed by Defendants.

25. As a result of the malicious prosecution, plaintiff was deprived of his liberty and suffered the humiliation, metal anguish, indignity and frustrations of an unjust criminal prosecution and made multiple court appearances to defend his liberty against theses unjust charges, sustained legal fees and lost earnings.

AS FOR THE FOURTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

26. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 25 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

27. That the aforesaid arrest and prosecution of plaintiff by the aforesaid Defendant Officers was an attempt at "payback" to plaintiff for a prior criminal arrest that was dismissed and an ensuing civil action pending in Supreme Court, Kings County.

D 28. That said defendant officers threatened plaintiff with a false report to ACS unless he signed a consent to the search after his arrest.

D 29. That said defendant officers thereupon falsely reported plaintiff to ACS for investigation.

D 30. That said acts were intentional and malicious.

D 31. That by reason of the aforesaid, defendant The City of New York and defendant officers are liable to plaintiff in misuse of governmental authority.

AS FOR THE FIFTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

8 32. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 31 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

D 33. That by reason of the aforesaid, defendant officers are liable to plaintiff in trespass.

AS FOR THE SIXTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

8 34. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 33 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

D 35. That by reason of the aforesaid, defendant officers are liable to plaintiff in battery.

AS FOR THE SEVENTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

8 36. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 35 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

D 37. That by reason of the aforesaid, defendant The City of New York and defendant officers are liable to plaintiff for intentional infliction of mental distress.

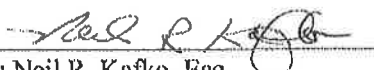
AS FOR THE EIGHTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF LEYSON M. VARGAS

8 38. Plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs numbered 1 through 37 of the verified complaint with the same force and effect as if more fully set forth herein at length herein.

D 39. That by reason of the aforesaid, defendant The City of New York and defendant officers are liable to plaintiff for harassment.

WHEREFORE, plaintiff demands judgment against defendant for the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth causes of action for a sum for a money in excess of the jurisdictional limits of any lower Court which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: Bronx, New York
September 21, 2015


By: Neil R. Kafko, Esq.
KAFKO SCHNITZER, LLP
Attorneys for Plaintiff
7 Hugh J. Grant Circle
Bronx, New York 10462
(718) 319-8902

STATE OF NEW YORK)
) SS.:
COUNTY OF BRONX)

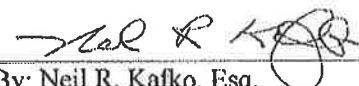
The undersigned, an attorney admitted to practice in the Courts of the State of New York affirms under the penalties of perjury as follows:

That he is associated with the attorneys of records for plaintiff(s); has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; that the same is true to his knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters; he believes them to be true.

He further says that the reason this verification is made by him and not by plaintiff(s) is that plaintiff(s) is(are) not within the County wherein the attorneys have their offices.

The grounds of his belief as to all matters not stated upon his knowledge are information obtained from plaintiff and from the file.

Dated: September 21, 2015


By: Neil R. Kafko, Esq.